

**REMARKS**

Applicant respectfully requests the Examiner reconsider and withdraw the objection to the disclosure in view of the above corrective Amendment to page 11, line 34.

Applicant respectfully traverses the rejection of claims 1-21 Under 35 U.S.C.112, first paragraph.

This rejection means that, in the Examiner's opinion, Applicant's disclosure/written description would not enable a person of ordinary skill in the relevant art to make and use the claimed invention. Applicant respectfully disagrees.

This rejection appears to be based on the Examiner's questioning of the words "deflected" and "deflectable" to describe the movements of the push rods. The Examiner also states that "it is not comprehensible from the depicted and described mechanism how the push rod bends".

Even though, it is true that the word "deflected" can also be used in the sense of "bending", such is **not** the case here, where the translation of the priority German application uses the word "deflect" or "deflection" in the sense of "displaced" or "displacement", respectively, of an oscillating element (such as spring); i.e., there is **no** need for "bending" of the push rods.

In Applicant's specification and claims, the term "deflection" is used precisely in the meaning as described above. In the embodiment of the invention illustrated in Fig. 2, the testing element 20 with push rods 21 - as shown by the double arrow in the drawing - is moved back and forth in an oscillating manner in front of the testing shafts 13. Each of the individual push rods 21 of the testing element 20 is connected to a coil spring. When the push rods 21 are at rest, the

coil springs are relaxed and exhibit a specific length, cf. the bottommost push rod 21 in Fig. 2. When the testing element 20 executes a forward motion, the push rods 21, located above the bottommost push rod, impact the cigarettes 12. Since the forward motion of the testing element is temporarily halted, the push rods are moved backwards in a linear movement caused by the resistance of the cigarettes, specifically against the spring force of the coil springs; i.e., the push rods are "deflected" from their position of rest.

If the Examiner prefers, Applicant will amend the specification and claims to use forms of the word "displaced"; however, Applicant does not feel that such numerous amendments are required. In any event, if there is still a problem with the use of the words "deflect" and "deflection", Applicant respectfully requests the Examiner to **call the undersigned attorney** to discuss the matter.

Applicant senses that the Examiner may not understand the present invention relative to Applicant's Patent No. 6,508,138 - FOCKE et al. (which is cited in Applicant's specification, on page 3 of the Office Action, on the Examiner's Form PTO-892, and in Applicant's filed Information Disclosure Statement).

FOCKE '138 was issued in January 21, 2003, and is known to persons of ordinary skills and the relevant art.

The present invention is a further development of the invention of FOCKE '138 which discloses a checking device for testing a cigarette formation using individual "displaceable" or "deflectable" rods, which, for example can be moved against a cigarette magazine. If cigarettes having the required specified length are present at the testing position in the cigarette magazine,

the rods, which are elastically supported in the checking device, are "displaced" or "deflected" toward the rear relative to the checking device. This process of rod deflection generates a corresponding actuation signal. If, however, any cigarettes are erroneously missing at the checking positions, the corresponding rod is not displaced, and no actuation signal is generated. If, on the other hand, there is present at the checked position a cigarette which is too short in comparison to the required cigarette length, a signal is also generated; however, this signal is triggered at a later point in time than a signal resulting from a correctly formed cigarette. FOCKE '138 essentially relates to the constructive implementation of the checking device (or "testing element"), the individual rods and the technical devices (sensors and the like), by means of which the individual actuation signals can be generated. (It is noted that FOCKE '138 refers to the "push rod 35" as being "displaced", for example at column 4, lines 1-2.)

The **present invention, however**, relates broadly to a method and devices which simplify the **evaluation** of the actuation signals generated by the rods. It, therefore, is a further development based on FOCKE '138. Thus, the respective actuation signals generated during a check, for example, are resolved with respect to their location: as soon as an actuation signal is generated, the location of the checking element associated with this actuation signal is determined. If a faulty cigarette is very short, the corresponding actuation signal would also be generated at a much later time, since the corresponding deflection/displacement of the rods occurs much later.

The word "deflection" can indeed be used to describe the testing element 20, as well as the rods 21. The checking member ("testing element") 20 oscillates back and forth about a rest

position. In its forward movement, it approaches the cigarette magazine; in its backward movement, it moves away from the cigarette magazine; The rods 21 are also "deflected/displaced" with respect to their respective rest positions as soon as they impinge the cigarettes.

In summary, the word "deflection" is used in the sense of "displacement", as where a cylindrical coil spring is deflected (or displaced) under the influence of a force applied along the longitudinal axis of the cylindrical coil spring.

Thus, Applicant respectfully submits that the **claimed invention** clearly is "enabled", and is a further development of FOCKE '138.

Applicant respectfully requests the Examiner to reconsider and withdraw the objection to the disclosure and also the rejection under 35 U.S.C. 112, first paragraph, and to find the application to be in condition for allowance with all of claims 1-21; however, if for any reason the Examiner feels that the application is not now in the condition for allowance, the Examiner is respectfully requested to **call the undersigned attorney** to discuss any unresolved issues and to expedite the disposition of the application.


Applicant files concurrently herewith a Petition (with fee) for an Extension of Time of one month.

AMENDMENT UNDER 37 C.F.R. § 1.111  
U.S. APPLN. NO. 10/700,059

Applicant also petitions for any extension which may be required to maintain pendency of the application.

The USPTO is directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,

  
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